



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 30, 2011

CBCA 2435-RELO

In the Matter of ROBERT P. KROPIK

Robert P. Kropik, Tampa, FL, Claimant.

Patrick J. Cunningham, Director, Indianapolis Transportation Payments Office, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

The Department of the Air Force transferred Robert P. Kropik from Virginia to Florida in August 2010. In conjunction with this relocation, the Government arranged for Mr. Kropik's household goods to be moved from his old residence to his new one. The goods weighed 25,440 pounds. The Defense Finance and Accounting Service (DFAS) believes that the Government is responsible for moving only 18,480 pounds of the goods – 18,000 as limited by statute plus 480 of Mr. Kropik's professional books and papers.¹ DFAS has demanded that Mr. Kropik pay the proportionate share of the cost of moving the remaining 6960 pounds.

In objecting to the Government's demand, Mr. Kropik places on the mover selected by the Government's transportation management office the responsibility for shipment of the weight in excess of 18,480 pounds. Mr. Kropik makes the following assertions: This mover had been suspended from government contracts for the previous two years due to complaints

¹ The cost of shipping professional books, papers, and equipment is covered by agencies as an administrative expense. The weight of these items is not subject to the 18,000-pound limit. 41 CFR 302-7.303 (2010); JTR C5154-C.

about poor customer relations and management. The mover's representative estimated that Mr. Kropik's goods would weigh less than 19,000 pounds, and that with a deduction of ten percent for packing material, the net weight of the goods would be less than 18,000 pounds. The representative promised to inform Mr. Kropik if the net weight might exceed 18,000 pounds but never did so. Mr. Kropik never authorized the mover to ship more than 18,000 pounds. Documents produced by the mover which bear Mr. Kropik's signature were never actually signed by him; the "signatures" appear to have been cut from other documents and photostatically copied. A "Government Household Goods Shipping Order" naming the mover and regarding his goods lists pianos and a grandfather clock under "Description of Services," but he does not own a piano or a grandfather clock. Mr. Kropik concludes that the mover fabricated various documents and breached its contract with the Government.

As both parties recognize, 5 U.S.C. § 5724(a)(2) (2006) controls the resolution of the dispute. This statutory provision requires an agency which transfers an employee to a new duty station, in the interest of the Government, to pay "the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking [the employee's] household goods and personal effects" -- but only those goods and effects "not in excess of 18,000 pounds net weight." *See also* 41 CFR 302-7.2 (2020), JTR C5154-B (regulations reiterating statutory limitation). As we have often held, the statute leaves no room for compromise as to the weight of goods which may be transported at government expense. *E.g., Michael V. Torretta*, CBCA 1521-RELO, 09-2 BCA ¶ 34,168 (collecting cases). The cost of transporting additional goods is the responsibility of the employee. *Michael L. Rivera*, GSBCA 16350-RELO, 04-1 BCA ¶ 32,615.

There is no question as to the weight of the household goods the Government shipped on behalf of Mr. Kropik. The Government has provided certified weight tickets – a common and accepted means of proving the weight of goods (*Alan Poleszak*, GSBCA 16693-RELO, 05-2 BCA ¶ 33,066; *Jaime V. Mercado*, GSBCA 16313-RELO, 04-1 BCA ¶ 32,583) – and the employee has not challenged the veracity of those tickets. Consequently, even if everything Mr. Kropik says is true, he must pay for the shipment of the 6960 pounds of goods in excess of the 18,000 pound limit which were moved in conjunction with his transfer.

The cost of this part of shipment was calculated almost properly by DFAS. It is, as the agency believes, the fraction 6960 pounds (the excess weight) divided by 25,440 pounds (the total weight), multiplied by the total cost of the shipment. DFAS calculated Mr. Kropik's share as \$6378.33, which is the fraction multiplied by \$23,313.89. The actual total cost as shown on the bill of lading was \$23,313.87. Multiplying the fraction by that number yields \$6378.32. We grant this claim to the extent of reducing the employee's debt to the Government by one penny.

Mr. Kropik's assertions raise questions about the business practices of the mover that shipped his goods. The Department of Defense may wish to investigate these assertions as it considers whether to continue to do business with the mover. The Board will not do so, however. We settle claims by federal civilian employees for relocation expenses incident to transfers of official duty station; we do not conduct management reviews of agencies' relocation activities and contracts. 31 U.S.C. § 3702(a)(3) (2006); *James N. Herring, Jr.*, GSBCA 16455-RELO, 05-1 BCA ¶ 32,929; *Victor G. Herington*, GSBCA 15914-RELO, 03-1 BCA ¶ 32,187.

Thus, any advice the mover's representative may have given the employee as to the estimate of the weight of the goods to be transported, or the deduction of weight to account for packing materials, cannot affect the outcome of this case. "[E]rroneous or inaccurate advice by . . . third parties cannot bind the Government to spend money in violation of statute or regulation." *George W. Currie*, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814 (quoting *Keith D. Weverstad*, GSBCA 14366-RELO, 98-1 BCA ¶ 29,438 (1997)); *see also Jerry C. West*, GSBCA 16451-RELO, 04-2 BCA ¶ 32,764. We note that as to the packing materials, the advice was inconsistent with regulation; the Federal Travel Regulation at the time said that for uncrated shipments, "[t]he net weight . . . includes the weight of barrels, boxes, cartons, and similar material used in packing." 41 CFR 302-7.12.² We also observe that the listing of pianos and a grandfather clock on the mover's "Government Household Goods Shipping Order" is merely part of a listing of items for which charges may be made, if those items are ordered; no charges are shown for a piano or clock, presumably because no such items were shipped.

STEPHEN M. DANIELS
Board Judge

² The current rule is different. Effective August 1, 2011, "For uncrated or van line shipments, a 2,000 pound allowance is added to the 18,000 pounds net weight allowance to cover packing materials for the shipment." 41 CFR 302-7.2 (as amended by 76 Fed. Reg. 18,326, 18,339 (Apr. 1, 2011)).